

VENTURA COUNTY

Revised Audit Report

HANDICAPPED AND DISABLED STUDENTS PROGRAM

Chapter 1747, Statutes of 1984,
and Chapter 1274, Statutes of 1985

July 1, 2000, through June 30, 2003



STEVE WESTLY
California State Controller

November 2006



STEVE WESTLY
California State Controller

November 17, 2006

The Honorable Christine L. Cohen
Auditor-Controller
Ventura County
800 South Victoria Avenue
Ventura, CA 93003-1540

Dear Ms. Cohen:

The State Controller's Office audited the claims filed by Ventura County for costs of the legislatively mandated Handicapped and Disabled Students Program (Chapter 1747, Statutes of 1984, and Chapter 1274, Statutes of 1985) for the period of July 1, 2000, through June 30, 2003. This final report supersedes the original final report issued March 9, 2005.

The county claimed \$13,270,678 for the mandated program. Our audit disclosed that \$12,210,266 is allowable and \$1,060,412 is unallowable. The unallowable costs occurred primarily because the county claimed ineligible costs and misstated revenues. The State paid the county \$5,299,659. The State will pay allowable costs claimed that exceed the amount paid, totaling \$6,910,607, contingent upon available appropriations.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (COSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at COSM's Web site at www.csm.ca.gov (Guidebook link), and obtain IRC forms by telephone at (916) 323-3562 or by e-mail at csminfo@csm.ca.gov.

If you have any questions, please contact Jim L. Spano, Chief, Compliance Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/jj:vb

cc: (See page 2)

cc: Linda Shulman, Director
 Department of Behavioral Health
 Ventura County
Mercy Grieco
 Chief Deputy Auditor-Controller
 Ventura County
Todd Jerue, Program Budget Manager
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 Department of Finance
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 Special Education Program
 Department of Mental Health

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Audit Report

Summary

The State Controller's Office (SCO) audited the claims filed by Ventura County for costs of the legislatively mandated Handicapped and Disabled Students Program (Chapter 1747, Statutes of 1984, and Chapter 1274, Statutes of 1985) for the period of July 1, 2000, through June 30, 2003. The last day of fieldwork was December 9, 2005.

The county claimed \$13,270,678 for the mandated program. Our audit disclosed that \$12,210,266 is allowable and \$1,060,412 is unallowable. The unallowable costs occurred primarily because the county claimed ineligible costs and misstated revenues. The State paid the county \$5,299,659. The State will pay allowable costs claimed that exceed the amount paid, totaling \$6,910,607, contingent upon available appropriations.

Background

Chapter 26 of the *Government Code*, commencing with Section 7570, and *Welfare and Institutions Code* Section 5651 (added and amended by Chapter 1747, Statutes of 1984, and Chapter 1274, Statutes of 1985) require counties to participate in the mental health assessment for "individuals with exceptional needs," participate on the expanded Individualized Education Program (IEP) team, and provide case management services for "individuals with exceptional needs" who are designated as "seriously emotionally disturbed." These requirements impose a new program or higher level of service on counties.

On April 26, 1990, the Commission on State Mandates (COSM) determined that Chapter 1747, Statutes of 1984, resulted in state-mandated costs that are reimbursable pursuant to *Government Code* Section 17561.

Parameters and Guidelines establishes the state mandate and defines reimbursement criteria. COSM adopted *Parameters and Guidelines* on August 22, 1991 (last amended on August 29, 1996). In compliance with *Government Code* Section 17558, the SCO issues claiming instructions for mandated programs to assist local agencies in claiming reimbursable costs.

Parameters and Guidelines states that only 10% of mental health treatment costs are reimbursable. However, on September 30, 2002, Assembly Bill 2781 (Chapter 1167, Statutes of 2002) changed the regulatory criteria by stating that the percentage of treatment costs claimed by counties for fiscal year (FY) 2000-01 and prior fiscal years is not subject to dispute by the SCO. Furthermore, this legislation states that, for claims filed in FY 2001-02 and thereafter, counties are not required to provide any share of those costs or to fund the cost of any part of these services with money received from the Local Revenue Fund established by *Welfare and Institutions Code* Section 17600 et seq. (realignment funds). Furthermore, Senate Bill 1895 (Chapter 493, Statutes of 2004) states that realignment funds used by counties for the Handicapped and Disabled Students Program "are eligible for reimbursement from the state for all allowable costs to fund assessments, psychotherapy, and other mental health services . . ." and that the finding by the Legislature is "declaratory of existing law." (Emphasis added.)

On May 26, 2005, the COSM adopted a *Statement of Decision* for the Handicapped and Disabled Students II Program that incorporates the above legislation and further identified medication support as a reimbursable cost effective July 1, 2001. The COSM adopted the *Parameters and Guidelines* for this new program on December 9, 2005, and made technical corrections to it on July 21, 2006. *Parameters and Guidelines* for the Handicapped and Disabled Students II Program states that "Some costs disallowed by the State Controller's Office in prior years are now reimbursable beginning July 1, 2001 (e.g., medication monitoring). Rather than claimants re-filing claims for those costs incurred beginning July 1, 2001, the State Controller's Office will reissue the audit reports." Consequently, this report excludes any adjustments for medication support costs commencing July 1, 2001.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Handicapped and Disabled Students Program for the period of July 1, 2000, through June 30, 2003.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, not funded by another source, and not unreasonable and/or excessive.

We conducted the audit according to *Government Auditing Standards*, issued by the Comptroller General of the United States, and under the authority of *Government Code* Section 17558.5. We did not audit the county's financial statements. Our audit scope was limited to planning and performing audit procedures necessary to obtain reasonable assurance that costs claimed were allowable for reimbursement. Accordingly, we examined transactions, on a test basis, to determine whether the costs claimed were supported.

We limited our review of the county's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

Conclusion

The audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Revised Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, Ventura County claimed \$13,270,678 for Handicapped and Disabled Students Program costs. Our audit disclosed that \$12,210,266 is allowable and \$1,060,412 is unallowable.

For FY 2000-01, the State paid the county \$2,535,425. Our audit disclosed that \$3,683,696 is allowable. The state will pay allowable costs claimed that exceed the amount paid, totaling \$1,148,271, contingent upon available appropriations.

For FY 2001-02, the State paid the county \$2,764,180. Our audit disclosed that \$4,498,685 is allowable. The state will pay allowable costs claimed that exceed the amount paid, totaling \$1,432,701, contingent upon available appropriations.

For FY 2002-03, the State paid the county \$54. Our audit disclosed that \$4,647,025 is allowable. The state will pay allowable costs claimed that exceed the amount paid, totaling \$4,329,635, contingent upon available appropriations.

Views of Responsible Officials

We issued a draft audit report on November 10, 2004. Christine Cohen, county Auditor-Controller, and Linda Shulman, Director of the county Behavioral Health Department, responded by letter dated December 17, 2004, in which they disagreed with Findings 2 and 5 and agreed with the remaining findings. The county's response is included as an attachment to this audit report.

Subsequent to issuance of our final report dated March 9, 2005, the COSM adopted *Parameters and Guidelines* for the Handicapped and Disabled Students II Program. Under the newly adopted program guidelines, medication support costs are reimbursable beginning FY 2001-02. This change impacts Findings 2 and 3, increasing allowable costs by \$589,494. On September 28, 2006, Raja Perera of the Ventura County Behavioral Health Department was informed of the audit adjustments and reissuance of the final report. He concurred with the revised calculation.

Restricted Use

This report is solely for the information and use of Ventura County, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

**Revised Schedule 1—
Summary of Program Costs
July 1, 2000, through June 30, 2003**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustments	Reference ¹
<u>July 1, 2000, through June 30, 2001</u>				
Assessment and case management costs	\$ 1,091,762	\$ 1,137,691	\$ 45,929	Finding 1
Administrative costs	196,767	205,228	8,461	Finding 1
Less offsetting revenues:				
Short-Doyle/Medi-Cal funds (FFP)	(157,228)	(164,291)	(7,063)	Findings 1, 4
EPSDT funds	—	(52,205)	(52,205)	Finding 5
State categorical funds	—	(68,877)	(68,877)	Finding 6
Net assessment and case management costs	<u>1,131,301</u>	<u>1,057,546</u>	<u>(73,755)</u>	
Treatment costs	3,119,626	2,763,546	(356,080)	Findings 1, 2
Administrative costs	562,247	518,672	(43,575)	Findings 1, 2, 3
Less offsetting revenues:				
Short-Doyle/Medi-Cal funds (FFP)	(452,022)	(370,906)	81,116	Findings 1, 2, 4
EPSDT funds	—	(117,855)	(117,855)	Finding 5
State categorical funds	(236,184)	(167,307)	68,877	Finding 6
Net treatment costs	<u>2,993,667</u>	<u>2,626,150</u>	<u>(367,517)</u>	
Total program costs	<u>\$ 4,124,968</u>	<u>3,683,696</u>	<u>\$ (441,272)</u>	
Less amount paid by the State		<u>(2,535,425)</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 1,148,271</u>		
<u>July 1, 2001, through June 30, 2002</u>				
Assessment and case management costs	\$ 1,056,298	\$ 1,056,298	\$ —	
Administrative costs	164,469	164,469	—	
Offsetting revenues:				
Short-Doyle/Medi-Cal funds (FFP)	(159,958)	(159,958)	—	
EPSDT funds	—	(68,431)	(68,431)	Finding 5
State categorical funds	—	(57,348)	(57,348)	Finding 6
Net assessment and case management costs	<u>1,060,809</u>	<u>935,030</u>	<u>(125,779)</u>	
Treatment costs	3,640,108	3,624,198	(15,910)	Finding 2
Administrative costs	566,776	539,931	(26,845)	Findings 2, 3
Offsetting revenues:				
Short-Doyle/Medi-Cal funds (FFP)	(532,824)	(526,853)	5,971	Finding 2
EPSDT funds	—	(196,589)	(196,589)	Finding 5
State categorical funds	(236,184)	(178,836)	57,348	Finding 6
Net treatment costs	<u>3,437,876</u>	<u>3,261,851</u>	<u>(176,025)</u>	
Total program costs	<u>\$ 4,498,685</u>	<u>4,196,881</u>	<u>\$ (301,804)</u>	
Less amount paid by the State		<u>(2,764,180)</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 1,432,701</u>		

Revised Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustments	Reference ¹
July 1, 2002, through June 30, 2003				
Assessment and case management costs	\$ 1,121,419	\$ 1,121,419	\$ —	
Administrative costs	116,377	116,377	—	
Offsetting revenues:				
Short-Doyle/Medi-Cal funds (FFP)	(162,135)	(162,135)	—	
EPSDT funds	—	(70,747)	(70,747)	Finding 5
State categorical funds	—	—	—	
Net assessment and case management costs	<u>1,075,661</u>	<u>1,004,914</u>	<u>(70,747)</u>	
Treatment costs	3,680,468	3,668,333	(12,135)	Finding 2
Administrative costs	381,945	330,630	(51,315)	Findings 2, 3
Offsetting revenues:				
Short-Doyle/Medi-Cal funds (FFP)	(491,049)	(487,760)	3,289	Finding 2
EPSDT funds	—	(186,428)	(186,428)	Finding 5
State categorical funds	—	—	—	
Net treatment costs	<u>3,571,364</u>	<u>3,324,775</u>	<u>(246,589)</u>	
Total program costs	<u>\$ 4,647,025</u>	<u>4,329,689</u>	<u>\$ (317,336)</u>	
Less amount paid by the State		<u>(54)</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 4,329,635</u>		
Summary: July 1, 2000, through June 30, 2003				
Assessment and case management costs	\$ 3,269,479	\$ 3,315,408	\$ 45,929	Finding 1
Administrative costs	477,613	486,074	8,461	Finding 1
Offsetting revenues:				
Short-Doyle/Medi-Cal funds (FFP)	(479,321)	(486,384)	(7,063)	Findings 1, 4
EPSDT funds	—	(191,383)	(191,383)	Finding 5
State categorical funds	—	(126,225)	(126,225)	Finding 6
Net assessment and case management costs	<u>3,267,771</u>	<u>2,997,490</u>	<u>(270,281)</u>	
Treatment costs	10,440,202	10,056,077	(384,125)	Findings 1, 2
Administrative costs	1,510,968	1,389,233	(121,735)	Findings 1, 2, 3
Offsetting revenues:				
Short-Doyle/Medi-Cal funds (FFP)	(1,475,895)	(1,385,519)	90,376	Findings 1, 2, 4
EPSDT funds	—	(500,872)	(500,872)	Finding 5
State categorical funds	<u>(472,368)</u>	<u>(346,143)</u>	<u>126,225</u>	Finding 6
Net treatment costs	<u>10,002,907</u>	<u>9,212,776</u>	<u>(790,131)</u>	
Total program costs	<u>\$13,270,678</u>	<u>12,210,266</u>	<u>\$ (1,060,412)</u>	
Less amount paid by the State		<u>(5,299,659)</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 6,910,607</u>		

¹ See the Findings and Recommendations section.

Revised Findings and Recommendations

FINDING 1— Adjustment to costs claimed

The county's FY 2000-01 claim was not supported by its accounting records. Prior to the start of audit fieldwork, the county noticed the errors and compiled revised cost data that should have been claimed. We were able to trace the revised cost data to the county's accounting records and management information system.

Parameters and Guidelines for the Handicapped and Disabled Students Program specifies that only actual increased costs incurred in the performance of the mandated activities and adequately documented are reimbursable.

As a result, we adjusted the original claimed amounts to reflect the costs as revised by the county.

	Fiscal Year 2000-01		
	Costs Claimed	Costs Supported	Difference
Assessment and case management costs	\$1,091,762	\$1,137,691	\$ 45,929
Administrative costs	196,767	205,228	8,461
Offsetting revenues:			
Short-Doyle/Medi-Cal funds (FFP)	(157,228)	(157,239)	(11)
Net assessment and case management costs	<u>1,131,301</u>	<u>1,185,680</u>	<u>54,379</u>
Treatment costs	3,119,626	3,198,037	78,411
Administrative costs	562,247	576,896	14,649
Offsetting revenues:			
Short-Doyle/Medi-Cal funds (FFP)	(452,022)	(452,067)	(45)
State categorical funds	(236,184)	(236,184)	—
Net treatment costs	<u>(2,993,667)</u>	<u>3,086,682</u>	<u>93,015</u>
Audit adjustment	<u>\$4,124,968</u>	<u>\$4,272,362</u>	<u>\$ 147,394</u>

Recommendation

We recommend that the county ensure costs claimed are eligible increased costs incurred as a result of the mandate and are supported by appropriate documentation.

County's Response

The county concurred with the finding.

SCO's Comment

The finding and recommendation remain unchanged.

**FINDING 2—
Ineligible treatment
costs claimed**

The county claimed costs for medication monitoring and crisis intervention services that are ineligible.

Parameters and Guidelines for the Handicapped and Disabled Students Program specifies that only the following treatment services are reimbursable: individual therapy; collateral therapy and contacts; group therapy; day treatment; and the mental health portion of residential treatment in excess of California Department of Social Services payments for residential placement. *Parameters and Guidelines* for the Handicapped and Disabled Students II Program allows medication monitoring costs beginning in FY 2001-02.

As a result, ineligible treatment costs and related administrative costs and revenue offsets have been adjusted as follows.

	Fiscal Year			
	2000-01	2001-02	2002-03	Total
Treatment costs:				
Medication monitoring	\$ (381,894)	\$ —	\$ —	\$ (381,894)
Crisis intervention	(52,597)	(15,910)	(12,135)	(80,642)
Total ineligible treatment costs	(434,491)	(15,910)	(12,135)	(462,536)
Administrative costs	(51,877)	(2,477)	(1,264)	(55,618)
Offsetting revenues:				
Short-Doyle/Medi-Cal funds (FFP)	101,571	5,971	3,289	110,831
Audit adjustment	<u>\$ (384,797)</u>	<u>\$ (12,416)</u>	<u>\$ (10,110)</u>	<u>\$ (407,323)</u>

Recommendation

We recommend that the county ensure costs claimed are eligible increased costs incurred as a result of the mandate and are supported by appropriate documentation.

County's Response

The county disagreed with the finding, stating that both medication monitoring and crisis intervention are included as eligible services under state regulations, and that *Parameters and Guidelines* was not intended to exclude them from reimbursable costs.

SCO's Comment

The finding has been updated to allow medication monitoring costs for FY 2001-02 and FY 2002-03 due to the adoption of the *Parameters and Guidelines* for the Handicapped and Disabled Students II Program.

Crisis intervention was not included in the *Parameters and Guidelines* for the Handicapped and Disabled Students II Program. Therefore, the finding and recommendation remain unchanged relative to crisis intervention costs.

**FINDING 3—
Misstated
administrative costs
claimed**

The county made some inadvertent errors in recording administrative costs on its claims.

Parameters and Guidelines for the Handicapped and Disabled Students Program specifies that only actual increased costs incurred in the performance of the mandated activities and adequately documented are reimbursable.

As a result, we adjusted indirect costs claimed based on actual indirect costs as reported on the county's annual cost reports, as follows:

	Fiscal Year			
	2000-01	2001-02	2002-03	Total
Treatment costs:				
Administrative costs claimed	\$ 562,247	\$ 566,776	\$ 381,945	\$1,510,968
Finding 1 adjustment	14,649	—	—	14,649
Finding 2 adjustment	(51,877)	(2,477)	(1,264)	(55,618)
Adjusted administrative costs	525,019	564,299	380,681	1,469,999
Costs supported	518,672	539,931	330,630	1,389,233
Audit adjustment	\$ (6,347)	\$ (24,368)	\$ (50,051)	\$ (80,766)

Recommendation

We recommend that the county ensure costs claimed are eligible increased costs incurred as a result of the mandate and are supported by appropriate documentation.

County's Response

The county concurred with the finding.

SCO's Comment

The finding has been updated due to the adoption of the *Parameters and Guidelines* for the Handicapped and Disabled Students II Program. We revised the finding for the change in allowable medication monitoring costs in Finding 2. Medication support costs are allowable, beginning in FY 2001-02.

**FINDING 4—
Understated revenues
claimed**

The county inadvertently understated Medi-Cal reimbursements on its FY 2000-01 claim. The amount claimed was not supported by the county's annual cost report submitted to the California Department of Mental Health.

Parameters and Guidelines for the Handicapped and Disabled Students Program specifies that reimbursements received by the county from any source as a result of the mandate must be deducted from its claims.

As a result, claimed revenue offsets have been adjusted as follows.

	Fiscal Year 2000-01		
	Costs Claimed	Costs Supported	Difference
Offsetting revenues:			
Short-Doyle/Medi-Cal funds (FFP):			
Assessment and case management	\$ (205,885)	\$ (212,937)	\$ (7,052)
Treatment	(452,023)	(472,433)	(20,410)
Audit adjustment	<u>\$ (657,908)</u>	<u>\$ (685,370)</u>	<u>\$ (27,462)</u>

Recommendation

We recommend that the county ensure the claims reconcile with the supporting documents and that all applicable reimbursements received are offset against claimed costs.

County's Response

The county concurred with the finding.

SCO's Comment

The finding and recommendation remain unchanged.

FINDING 5— Omitted revenue offsets from claims

The county did not report State matching funds received from the California Department of Mental Health under the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) Program, which reimburses the county for the cost of services provided to Medi-Cal clients.

Parameters and Guidelines for the Handicapped and Disabled Students Program specifies that any direct payments (categorical funds) received from the State that are specifically allocated to the program, and any other reimbursement received as a result of the mandate, must be deducted from the claims.

As a result, claimed revenue offsets have been adjusted as follows.

	Fiscal Year			Total
	2000-01	2001-02	2002-03	
Offsetting revenues:				
EPSDT funds:				
Assessment and case management	\$ (52,205)	\$ (68,431)	\$ (70,747)	\$ (191,383)
Treatment	(117,855)	(196,589)	(186,428)	(500,872)
Audit adjustment	<u>\$ (170,060)</u>	<u>\$ (265,020)</u>	<u>\$ (257,175)</u>	<u>\$ (692,255)</u>

Recommendation

We recommend that the county ensure all applicable reimbursements received are offset against claimed costs.

County's Response

The county disagreed with our calculation of EPSDT revenues allocable to the mandate. The county stated that the increase in EPSDT funding over the baseline year was not due to an increase in mandated clients served, but was primarily the result of expansion of services to Transitional Youth and Therapeutic Behavioral Services clients. The county stated that, due to the limitations of its information systems, it could not provide the documentation to support this argument. The county does not believe its information system limitations should be the basis for the State to seek reimbursement of these funds.

SCO's Comment

The finding and recommendation remain unchanged, since the county has not provided any additional information to support its argument.

**FINDING 6—
Inequitable
distribution of
revenue**

The county offset Special Education Pupil (SEP) funds, also known as AB 3632 funds, received from the State on its claims. However, in FY 2000-01 and FY 2001-02, the offsets were not made in direct proportion to assessment/case management and treatment costs incurred. The redistribution does not affect allowable costs.

	Fiscal Year		Total
	2000-01	2001-02	
Offsetting revenues:			
State categorical funds (SEP):			
Assessment and case management	\$ (68,877)	\$ (57,348)	\$ (126,225)
Treatment	68,877	57,348	126,225
Audit adjustment	\$ —	\$ —	\$ —

Recommendation

We recommend that the county ensure SEP funds are allocated equitably to all mental health services for which the funds were intended.

County's Response

The county concurred with the finding.

SCO's Comment

The finding and recommendation remain unchanged.

**Attachment—
County's Response to
Draft Audit Report**

CHRISTINE L. COHEN
AUDITOR-CONTROLLER
County of Ventura
800 South Victoria Avenue
Ventura, Ca 93009-1540



CHIEF DEPUTIES
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December 17, 2004

Mr. Jim Spano
Chief, Compliance Audits Bureau
State Controller's Office/Audits Division
Post Office Box 942850
Sacramento, California 94250-5874

Re: Ventura County Draft Audit Report/Handicapped and Disabled Students

Dear Mr. Spano:

This letter sets forth our responses to the findings and recommendations contained in the above-referenced audit (the "Draft Audit") of reimbursement claims by the County of Ventura (the "County") for costs of the Handicapped and Disabled Students program in fiscal years July 1, 2000 through June 30, 2003. We address the findings and recommendations in the order presented in the Draft Audit. References herein to "Parameters and Guidelines" are to the Parameters and Guidelines adopted by the Commission on State Mandates on August 22, 1991, as modified on August 29, 1996, applicable to the Handicapped and Disabled Students program.

Findings and Recommendations

Finding 1 – Adjustment to Costs Claimed.

The County concurs with this finding with respect to these costs (total addition: \$147,394).

Finding 2 - Ineligible Treatment Costs Claimed.

This finding disallowed two categories of treatment costs: medicine monitoring and crisis intervention, and related administrative costs (total disallowed: \$1,088,405). In each case, reimbursement was apparently denied on the basis that the claimed costs are not among the reimbursable "cost items" listed in section V (B)(2) of the Parameters and Guidelines.

First, it should be noted that the Commission on State Mandates (the "Commission") is required by recent legislation (SB 1895) to "reconsider its decision relating to included services and administrative and travel costs associated with services provided pursuant to Chapter 26.5 (commencing with Section 7570 of Division 7 of Title 1 of the Government Code), and the parameters and guidelines for

calculating the state reimbursement for these costs." The Commission has scheduled a hearing for May 26, 2005, to consider the scope of the "reconsideration" required under SB 1895 and the time period for which amended Parameters and Guidelines will be effective. (See Notice of Reconsideration, Briefing and Hearing Schedule, attached as Attachment A hereto.) As medication monitoring and crisis intervention will be among the "included services" considered by the Commission, denial of reimbursement for these services at this time is premature at best.

Your position is particularly ironic in light of the fact that the Controller has previously issued a legal opinion concluding that medication monitoring and crisis intervention are reimbursable under Chapter 26.5. (See Memorandum to Walter Barnes dated July 17, 2003, attached as Attachment B hereto.) According to the opinion, the only issue preventing reimbursement of these costs was "the method of implementation" of revised reimbursement guidelines (i.e., the procedure for amending the Parameters and Guidelines). The Legislature has removed that issue by enacting SB 1895. The Controller should stand by its opinion and recognize that medication monitoring and crisis intervention are reimbursable costs.

Furthermore, medication monitoring and crisis intervention are reimbursable even under the current Parameters and Guidelines, based upon the following:

Medicine Monitoring. The Parameters and Guidelines, in describing the scope of the mandate created by the Handicapped and Disabled Students program, define the treatment subject to reimbursement as including "mental health services, pursuant to sections 7571 and 7576 of the Government Code and their implementing regulations," including psychotherapy (Parameters and Guidelines, section I). Section 7576 of the Government Code provides that designated community mental health departments are responsible for the provision of "mental health services" (as such term is defined in regulations issued by the Department of Mental Health) when required under an Individualized Education Program (IEP). "Mental health services" is defined in title 2, division 9, chapter 1, article 1, section 60020, subdivision (i) of the California Code of Regulations as the following, when provided under an IEP: "psychotherapy as defined in section 2903 of the Business and Professions Code provided to the pupil individually or in a group, collateral services, medication monitoring, intensive day treatment, day rehabilitation, and case management." The same regulation, in subdivision (f), defines "medication monitoring" as "all medication support services with the exception of the medications or biologicals themselves and laboratory work." These are the "medicine monitoring" services provided by the County for which reimbursement should be allowed.

Crisis Intervention. As discussed above, the Parameters and Guidelines provide that reimbursement shall be provided for "mental health services" (as defined in Mental Health Department regulations) when required under an IEP. Pursuant to such regulations, the broad categories of treatment comprising "mental health services" includes "psychotherapy as defined in section 2903 of the Business and Professions Code." (California Code of Regulations, title 2, division 9, chapter 1, article 1, section 60020, subdivision (i)).

Section 2903 of the Business and Professions Code provides that "[p]sychotherapy . . . means the use of psychological methods in a professional relationship to assist a person or persons to acquire greater human effectiveness or to modify feelings, conditions, attitudes and behavior which are emotionally, intellectually, or socially ineffectual or maladjustive." "Crisis intervention," as defined in Department of Mental Health regulations, is "service, lasting less than 24 hours, to or on behalf of a beneficiary for a condition which requires more timely response than a regularly scheduled visit." Such activities may include, but are not limited to "assessment, collateral [services] and therapy," but do not include crisis stabilization. (California Code of Regulations, title 9, division 1, chapter 11, subchapter 1, article 2, section 1810.209). These services are "psychological methods" used to assist a person to acquire greater human effectiveness or to modify maladjustive feelings, conditions, attitudes or behavior. As such, crisis intervention is "psychotherapy" and therefore a mandated service when required under an IEP. There is no basis for asserting that the cost of such services is not a mandated cost subject to reimbursement under the Parameters and Guidelines.

The procedures for referring children for community mental health services under an IEP are generally not designed for responding to "psychiatric emergencies or other situations requiring an immediate response" (Article 2, Division 9, California Code of Regulations, section 60040(e)). This language was related primarily to inpatient hospitalization. However, the crisis intervention services currently in dispute were not provided as psychiatric emergency services leading to hospitalization or other emergency care, but rather were provided in the normal course of mental health treatment, after appropriate non-emergency referrals had been made. These services were provided as defined in Title 9, Division 1, California Code of Regulations, section 543, and designed to alleviate problems, which, if left untreated, presented imminent threat to the pupil.

Given the broad and general construction of the parameters and guidelines that were approved by the Commission during the late 1980s and early 1990s, it is not surprising that medication monitoring and crisis intervention were not specifically mentioned as reimbursable costs. The Commission during this era consciously crafted parameters and guidelines that were neither exhaustive nor complete. Rather, it was generally believed by the Commission, local agencies, and the Controller that the mandate would be implemented differently in virtually every county. Parameters and guidelines were meant to be an inclusive document, not exclusive.

Since 1991, the Controller, the Department of Mental Health and counties have agreed that medication monitoring and crisis intervention were eligible costs under the Handicapped and Disabled Students program. Every year, the Controller has desk reviewed every AB 3632 claim individually and regularly consulted the Department of Mental Health for its advice in determining eligibility. Without fail, the state has consistently reimbursed counties for these two services, and did so fully realizing what was in the Parameters and Guidelines.

Accordingly, the Draft Audit should be revised to restore the County's claims for medication monitoring, crisis intervention, and related administrative costs (total restored: \$1,088,405).

Finding 3 – Misstated Administrative Costs Claimed.

The County concurs with this finding with respect to these costs (total addition: \$10,822)

Finding 4 – Understated Revenues Claimed.

The County concurs with this finding with respect to these costs (total reduction: \$27,462).

Finding 5 – Omitted revenue offsets from claims.

This finding estimated the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) revenue earned through the mandated services and disallowed from the Seriously Emotionally Disturbed Pupils (SEP) funds claimed by the county.

The state used the percentage of EPSDT paid (estimated cost) over total EPSDT settled (actual cost) to calculate the EPSDT revenue offset. For fiscal years 00-01 & 01-02, the EPSDT paid and settled amounts were obtained through the state-published statistics. The percentage derived above was then applied to the Medi-Cal claimed mandated services to estimate the disallowed EPSDT revenue. Since there were no published amounts for the fiscal year 02-03, the 01-02 percentage was used. The county reserves the right to re-calculate the 02-03 EPSDT disallowance when the necessary statistics become available.

The county's position is that the EPSDT increase over the baseline during the three years under audit was not due to increase in mandated clients served, but was primarily the result of expansion services to Transitional Youth and Therapeutic Behavioral Services. EPSDT is paid when services to youth exceed the maintenance of effort or baseline of services established in 1994–1995. During the audit, the county demonstrated that there was no increase in Medi-Cal population in the special education program through the use of the unduplicated mandated client counts from the county information system. As a result, the County's position is that none of our EPSDT revenues for the three years under audit is attributable to this special education program; therefore, this revenue is not due to the State. During the audit, the auditor agreed with our argument but insisted that on the use of actual paid claims data to support our argument. The county could not obtain actual EPSDT claims for the mandated clients for the base year 94-95 due to non-availability of data in the information system. The county also could not obtain the EPSDT claims for the three years under review due to system limitations. These limitations and this specific required format for demonstrating our argument, do not, in our opinion, result in a finding that the county owes this money to the State.

The county is currently implementing a new information system to enhance the reporting capabilities; therefore, the county reserves the right to provide the actual EPSDT revenue on mandated claims for the future years.

Jim Spano, Chief, Compliance Audits Bureau
State Controller's Office
December 17, 2004
Page 5

For the reasons stated above, the Draft Audit should be revised to restore the county's claims (total restored: \$692,255).

Finding 6 – Inequitable Distribution of Revenue.

The County concurs with this finding with redistribution to these costs (no impact to allowable cost).

We hope that these responses and comments will assist you in the preparation of a fair and equitable final audit report. If you have any questions regarding this letter, or require any further information, please contact Mercy Grieco, Chief Deputy Auditor-Controller, at (805) 654-3191.

Very truly yours,


LINDA SHULMAN
Director, Behavioral Health Department


CHRISTINE L. COHEN
Auditor-Controller

Enclosure

cc: Walter Barnes, Chief Deputy State Controller, Finance
Patricia Ryan, Executive Director, California Mental Health Director's Association
John F. Johnston, County Executive Officer
Karen Davis, Deputy Director, Chief Financial Officer, Health Care Agency
John Polich, Assistant County Counsel
Mercy Grieco, Chief Deputy Auditor-Controller

ATT A

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR
STATEMENT OF DECISION ON:

Statutes 1984, Chapter 1747; Statutes 1985,
Chapter 1274; California Code of Regulations,
Tit. 2, §§ 60000-60200 (Emergency Regulations
adopted July 12, 1986), CSM 4282

Directed By Statutes 2004, Chapter 493,
Section 7, (Sen. Bill No. 1895)

Effective September 13, 2004.

Case No.: 04-RL-4282-10

Handicapped & Disabled Students

NOTICE OF RECONSIDERATION,
BRIEFING AND HEARING SCHEDULE

HEARING DATE: May 26, 2005

TO: Senator John Burton
California State Association of Mental Health Directors
California State Association of Counties (SB 90 Service)
Department of Finance
State Controller's Office
Department of Mental Health
Department of Education
Legislative Analyst
Interested Parties

Statutes 2004, chapter 493, section 7 (Sen. Bill No. 1895, eff. Sept. 13, 2004), requires the Commission on State Mandates, on or before December 31, 2005, "notwithstanding any other law" to "reconsider its decision relating to included services and administrative and travel costs associated with services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and the parameters and guidelines for calculating the state reimbursements for these costs."

Administrative Record

The existing administrative record for this reconsideration consists of the original test claim proceedings in CSM 4282, including the decision issued by the Sixth District Court of Appeal in *County of Santa Clara v. State of California, et al.* (Case No. H009520), the parameters and guidelines, and the statewide cost estimate. By November 30, 2004, this record will be available on the Commission's website (www.csm.ca.gov).

Commission members shall receive copies of the administrative record of the original test claim proceedings (including parameters and guidelines and statewide cost estimate), and all documents on reconsideration, including the draft staff analysis, comments and briefs filed by

Notice of Reconsideration, Briefing and Hearing Calendar (Dated November 2, 2004)
Handicapped and Disabled Students, CSM 04-RL-4282-10.

interested parties, interested persons, and affected state agencies, final staff analysis and exhibits. Because of the statewide interest in this program, CSM staff proposes to post the administrative record, all filings, correspondence, staff analyses and hearing exhibits on the CSM website for public access. Whenever the website is updated, the mailing list will be notified.

Mailing List

Commission staff will create a consolidated e-mail list for this reconsideration. This notice is being e-mailed to the list provided by the California Mental Health Directors Association, and mailed to all parties, interested parties, and affected state agencies who are on the mailing lists for the new test claims filed by Counties of Stanislaus and Los Angeles on amendments to AB 3632 (*Handicapped and Disabled II*, CSM 02-TC-40, 02-TC-49) and the Proposed Amendments to the Parameters and Guidelines on *Handicapped and Disabled Students I* (00-PGA-03 & 04). On the Reconsideration, there is no lead claimant and the Legislature is the requestor. All parties receiving this notice by regular mail are requested to provide their e-mail addresses to csminfo@csm.ca.gov and to request addition to this mailing list.

Request for Initial Briefing – Briefs Due December 15, 2004

Commission staff requests the parties to file comments and briefs on the following two issues by **December 15, 2004**:

- What is the scope of the reconsideration directed by Senate Bill 1895? When responding to this issue, please consider the plain language of section 7 of Senate Bill 1895 and the analysis on the bill prepared by the Senate Rules Committee dated August 25, 2004, which states the following: “Directs the Commission on State Mandates (CSM), on or before December 31, 2005, to reconsider its decision relating to administrative and travel costs for AB 3632 (Brown), Chapter 1747, Statutes of 1984 and its parameters and guidelines for calculating state reimbursement costs.”
- What is the period of reimbursement for the Commission’s decision on reconsideration?

Any interested party, affected state agency, or interested person may comment, submit briefs, or correspond with the Commission on this request for initial briefing. An original and one copy or an original and a pdf file shall be submitted to the Commission. The comments will be posted on the Commission’s website. This will satisfy all the service requirements under California Code of Regulations, title 2, section 1181.2.

All filings must comply with the following requirements:

- Assertions or representations must be supported by documentary evidence and must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based upon the declarant’s personal knowledge or information or belief.
- If the comments or briefs cite to federal or state laws, regulations, executive orders, or court decisions, copies of those documents must be included in the filing. Court decisions that involve the Board of Control or the Commission on State Mandates are exempt from this requirement.

Draft Staff Analysis and Comments on the Draft Staff Analysis

On **January 20, 2005**, the draft staff analysis and any supporting documentation will be posted to the Commission's website. All parties and interested parties will be notified of the website posting.

Interested parties, affected state agencies, and interested persons are invited to file comments with the Commission on the draft staff analysis by **February 20, 2005**. Rebuttal comments may be filed with the Commission no later than **April 1, 2005**.

An original and one copy or an original and a pdf file shall be submitted to the Commission. The comments will be posted on the Commission's website. This will satisfy all the service requirements under California Code of Regulations, title 2, section 1181.2.

Comments on the draft staff analysis and rebuttal comments must comply with the following requirements:

- Assertions or representations must be supported by documentary evidence and must be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge or information or belief.
- If the comments cite to federal or state laws, regulations, executive orders, or court decisions, copies of those documents must be included in the filing. Court decisions that involve the Board of Control or the Commission on State Mandates are exempt from this requirement.

Commission Hearing – May 26, 2005

The Commission will hear and determine this reconsideration, and may adopt the proposed revised statement of decision on **May 26, 2005**. If a decision is not adopted in May, the revised decision will be set for adoption at the July 28, 2005 hearing.

With the exception of section 1188.4 of the Commission's regulations, the hearing procedures in article 7 of the Commission's regulations in effect at the time of the hearing will apply. Since this reconsideration was not requested pursuant to Government Code section 17559, the hearing procedures set forth in section 1188.4 do not apply in this case.

Representatives of interested parties and affected state agencies and the Legislature, will be asked to notify the Commission staff if they wish to testify. Time limits may be imposed if necessary.

A final staff analysis on the reconsideration will be issued and posted to the Commission's website on or about May 11, 2005.

Parameters and Guidelines

A pre-hearing conference on the parameters and guidelines will be convened after the adoption of the revised statement of decision.

If you have any questions regarding this matter, please contact Camille Shelton, Senior Commission Counsel, at (916) 323-8215.

Dated: 11/02/04

Original Signed By
PAULA HIGASHI, Executive Director

State of California

Steve Weatly, California State Controller

Memorandum

To : Walter Barnes
Chief Deputy State Controller, Finance

Date: July 17, 2003

From : State Controller's Office
Shawn P. Silva
Staff Counsel

Subject: REIMBURSABLE HANDICAPPED AND DISABLED STUDENTS TREATMENT SERVICE COSTS

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2004 DEC 14 AM 9:13

ISSUE

Does the passage of AB 2781 make medication monitoring and crises intervention reimbursable as a state mandate?

CONCLUSION

The passage of AB 2781 reaffirms the reimbursability of medication monitoring and crises intervention, however, the exact process of effectuating that intent is not clear.

BACKGROUND

In Ch. 1747, Statutes of 1984 and Ch. 1274, Statutes of 1985, the Legislature enacted statutory provisions to carry out the federal mandate requiring that handicapped children receive a "free appropriate public education." The Federal legislation setting forth that mandate was entitled the "Education for All Handicapped Children Act," or EHA.

The County of Santa Clara subsequently filed a test claim with the Commission on State Mandates. They claimed that Ch. 1747, Statutes of 1984, and Ch. 1274, Statutes of 1985, and Title 2, Div. 9, Sections 60000 through 60200, California Code of Regulations constituted a reimbursable state mandate. On April 26, 1990, the Commission rendered its statement of decision, finding the existence of a state mandate. Relevant to our analysis is the statement that "such services includes *psychotherapy and other mental health services* provided to 'individuals with exceptional needs,' including those designated as 'seriously emotionally disturbed,' and required in such individual's IEP." (Emphasis added.) At the time, psychotherapy and mental health services were defined in regulation, and included medication monitoring and crises intervention. The Commission noted that:

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"The determination of a reimbursable state mandate does not mean that all increased costs claimed will be reimbursed. Reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program ..."

Such a requirement is consistent with Commission regulations and practices.

Parameters and Guidelines for the mandate were adopted on August 22, 1991. Although revised in 1995, the relevant language has been unchanged since the original adoption. That language provides that reimbursable activities include:

"2. For each eligible claimant, the following cost items, for the provision of mental health services when required by a child's individualized education program, are ten (10) percent reimbursable (Government Code 7576):

- a. Individual therapy,
- b. Collateral therapy and contacts,
- c. Group therapy,
- d. Day treatment, and
- e. Mental health portion of residential treatment in excess of the State Department of Social Services payment for the residential placement."

→ It is unknown why the parameters and guidelines only included a subset of the activities defined in the regulations, as constituting mental health services. Although this office does not find the inclusion of medication monitoring and crises intervention contrary to either the statutes or statement of decision, we felt compelled to find those activities unreimbursable, based on the specific list set forth in the parameters and guidelines.

Subsequently, AB 2871 (passed on September 30, 2002) was enacted as an omnibus bill concerning education, and included two sections which address the reimbursement of mental health services for handicapped and disabled students.

Section 38 provides:

"SEC. 38. Section 5701.3 of the Welfare and Institutions Code is amended to read:

5701.3. Consistent with the annual Budget Act, this chapter shall not affect the responsibility of the state to fund psychotherapy and other mental health services required by Chapter 26.5 (commencing with

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Section 7570) of Division 7 of Title 1 of the Government Code, and the state shall reimburse counties for all allowable costs incurred by counties in providing services pursuant to that chapter. The reimbursement provided pursuant to this section for purposes of Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code shall be provided by the state through an appropriation included in either the annual Budget Act or other statute. Counties shall continue to receive reimbursement from specifically appropriated funds for costs necessarily incurred in providing psychotherapy and other mental health services in accordance with this chapter. For reimbursement claims for services delivered in the 2001-02 fiscal year and thereafter, counties are not required to provide any share of those costs or to fund the cost of any part of these services with money received from the Local Revenue Fund established by Chapter 6 (commencing with Section 17600) of Part 5 of Division 9."

And Section 41 provides:

"SEC. 41. Notwithstanding any other provision of law, with respect to the handicapped and disabled students state-mandated local program, county reimbursement claims submitted to the Controller for reimbursement for services associated with providing, pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, allowable mental health treatment services required by an individualized education program in fiscal years up to and including the 2000-01 fiscal year are not subject to dispute by the Controller's office regarding the percentage of reimbursement claimed by any county. A county that previously submitted a reimbursement claim for services delivered in the 2000-01 fiscal year or prior for less than 100 percent of the allowable mental health treatment services to special education pupils may not amend its claim for 100 percent or other percentage of those same allowable costs. This paragraph does not abridge the right of the Controller to otherwise dispute claims on the basis of allowable costs. With the exception of those costs claimed in excess of what is allowable, claims shall be fully paid at the percentage originally submitted."

The question has been posed as to whether or not the language in the above listed sections would now require reimbursement for the costs of medication monitoring and crisis intervention.

ANALYSIS

When addressing this question, it becomes clear that the focus should be placed on Section 38. This is because Section 41 fails to alter reimbursability for medication monitoring and crisis intervention, since it only exempts the "percentage of

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reimbursement claimed by any county" from review by the Controller's Office. It does not attempt to define what activities are, or are not, reimbursable. Therefore, Section 41 does not alter our interpretation that medication monitoring and crises intervention are not reimbursable under the Parameters & Guidelines.

On the other hand, Section 38 does support the reimbursability of medication monitoring and crises intervention. Section 38 amends Section 5701.3 of the Welfare & Institutions Code. In its first sentence, it recognizes "the responsibility of the state to fund psychotherapy and other mental health services required by Chapter 26.5 [of the Government Code] ...". This clause does not limit the activities to a short list of delineated services, as is done in the parameters and guidelines. It specifically provides that the State is responsible to fund all psychotherapy and mental health services provided pursuant to chapter 26.5. In addition, the final sentence of the section states that "[f]or reimbursement claims for services delivered in the 2001-02 fiscal year and thereafter, counties are not required to provide any share of those costs [costs necessarily incurred in providing psychotherapy and other mental health services in accordance with this chapter] or to fund the cost of any part of these services with money received from the Local Revenue Fund." This section reflects the desire to provide reimbursement for all "necessarily incurred" mental health service costs, not just those specifically listed in the parameters and guidelines, which would include medication monitoring and crises intervention. It also indicates the desire to eliminate the 90/10 split which had been applied to prior requests for reimbursement for mental health treatment services.

The only uncertainty concerning Section 38 is the method of implementation. Generally, reimbursement through the mandates process cannot be provided until a test claim is filed and that process has been completed (i.e. parameters and guidelines are issued). However, Section 5701.3 does not constitute a mandate since it does not require local entities to engage in any new activities. Section 5701.3 sets forth the Legislature's intent that the State reimburse locals for certain activities, but it does not provide a specific method of effectuating that intent. This contrasts with Section 40 of the same bill, which specifically directs the Commission to amend the parameters and guidelines of the *School Bus Safety II* mandate. Although the method may not be crystal clear, the outcome desired is: all psychotherapy and mental health services provided pursuant to chapter 26.5 are to be reimbursed at 100% from fiscal year 2001-2002 forward.

Section 5701.3 as amended, however, does not preclude a proposed amendment by Los Angeles County from making medication monitoring and crises intervention reimbursable through the Commission process. That portion of the amendment is based upon the original statement of decision and the Parameters & Guidelines as amended in 1996 (the relevant language was unchanged from the 1991 original adoption of the Parameters & Guidelines). Neither the Department of Finance nor our office opposes the amendment to add medication monitoring and crises intervention to the existing Parameters & Guidelines. We do not oppose the amendment because the basis for our conclusion that those activities were not

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covered, was the explicit language of the parameters and guidelines, not that those activities were inconsistent with the Statement of Decision or the relevant statutes.

The only remaining issue then, is the effective date of the amendments. Commission regulations provide that for a given fiscal year to be covered by an amendment, that amendment must be made by January 15th following the end of the fiscal year in question. Based upon the dates that the activities were incorporated into the proposed amendment, we believe that medication monitoring would be reimbursable beginning with FY 2001-02 and crisis intervention would be reimbursable beginning with FY 2002-03. Based on these effective dates, the amendment would have no effect on those audits already conducted, since the latest year audited was FY 1999-2000. Even implementation of Section 5701.3 would not alter the audits already conducted, since it only affects FY 2001-02 and thereafter.

If you have any questions, please feel free to call me at 445-1073.

SDS/ac

**State Controller's Office
Division of Audits
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Sacramento, California 94250-5874**

<http://www.sco.ca.gov>